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ABSTRACT

This synthesis document provides an understanding of current issues, policies, and practices in the application of school discipline to students with disabilities. The report contains three sections: (1) legal information including the provisions of the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973, the similarities and differences in their application to matters of discipline, and examination of suspension and expulsion; (2) policy implications of discipline, focusing on school climate, staff performance concerns, general and special education concerns, and interagency concerns; and (3) a discussion of school discipline plans and prevention strategies, such as corporal punishment, time out, level systems, systematic exclusion, and modified school day. The paper concludes that a clear understanding of legal requirements coupled with a combination of well-planned services firmly supported by families and staff contribute to a positive and total educational environment. School officials are urged to redirect students who manifest challenging behaviors at an early age into more productive and socially responsible behavior. School officials are also urged to create strong relationships among school personnel and with families and community agencies. Congress is urged to address the legal and procedural quagmire which has resulted from its silence in the IDEA as to the discipline of students with disabilities. (Each subsection contains references.) (JDD)

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DISCIPLINING STUDENTS WITH DISABILITIES:

A SYNTHESIS OF CRITICAL AND EMERGING ISSUES

By

Eric P. Hartwig, Ph.D. and Gary M. Ruesch, Esq.

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National Association of State Directors of Special Education
1800 Diagonal Road, Suite 320
Alexandria, VA 22314

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Antonis Katsiyannis, Ed.D
Special Education/Communication Disorders Department
University of Nebraska at Kearney

David Noble Stockford, Director
Division of Special Education
Maine Department of Education

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ABSTRACT

The purpose of this synthesis is to provide an understanding of current issues, policies and practices in the application of school discipline to students with disabilities. Although the Individuals With Disabilities Education Act (IDEA) is silent regarding disciplinary matters, different legal authorities such as statutes, rules and regulations, court decisions, state education agency policies, and interpretations by the U. S. Department of Education Office of Special Education Programs (OSEP) have all become involved in interpreting and determining procedures to be followed when a disciplinary action concerns a student with a disability.

The topic of disciplining students with disabilities is extremely complex and any discussion must necessarily include many related educational and legal issues. This synthesis is organized into the following sections to provide a synopsis of the major components of this topic:

The first portion of the report presents legal information including a background on the provisions of the two major federal laws affecting students with disabilities—IDEA and Section 504—and the similarities and differences in their application to matters of discipline. A separate section explaining suspension and expulsion is also included.

In the following section on policy implications, the issues of school climate and concerns related to staff performance, general and special education interface, and interagency matters are discussed.

The remainder of the report contains a discussion of school discipline plans and prevention strategies.

This synthesis references *Discipline in the School*, a detailed and comprehensive treatment of all aspects of the topics of discipline, by Eric P. Hartwig, Ph.D. and Gary M. Ruesch, Esq., LRP Publications, Horsham, Pennsylvania, 1994.

FOREWORD

This report is the result of a study done under Project FORUM, a contract funded by the Office of Special Education Programs of the U. S. Department of Education and located at the National Association of State Directors of Special Education (NASDSE). Project FORUM carries out a variety of activities that provide information needed for program improvement, and promote the utilization of research data and other information for improving outcomes for students with disabilities. The project also provides technical assistance and information on emerging issues, and convenes small work groups to gather expert input, obtain feedback, and develop conceptual frameworks related to critical topics in special education.

The purpose of this synthesis is to provide an understanding of current issues, policies and practices in the application of school discipline to students with disabilities. It was written under contract as part of Project FORUM's work during the second year of the contract. The authors, Eric P. Hartwig and Gary M. Ruesch, are uniquely qualified for this task. Their book, *Discipline in the School*, issued this year by LRP Publications, is a very detailed treatment of the topic. They have both had extensive experience dealing with discipline issues. Dr. Hartwig is an experienced school psychologist and currently is the chief executive officer and administrator of Pupil Services for the Marathon County Handicapped Children's Education Board, a consortium of schools in Wisconsin. He has taught at the college level and made many presentations at national and local conferences on discipline and related issues. Mr. Ruesch is an attorney currently in the firm of Davis and Kuelthau in Milwaukee. He has counseled school districts and is a noted speaker and author, most recently publishing "Lay Advocates Plan a Role in Special Education," in the *Wisconsin School News*.

In addition to this synthesis, another document on this topic was also produced this year by Eileen M. Ahearn, Ph.D. of the Project FORUM staff entitled *Discipline and Students with Disabilities: An Analysis of State Policies*. A copy of the analysis is available from NASDSE at 1800 Diagonal Road, Suite 320, Alexandria, VA 22314.

INTRODUCTION

Maintaining discipline in today's schools is a major challenge for all school officials. This challenge is no where greater than when discipline issues involve students with disabilities. The courts, with some reluctance, have become actively involved in attending to and addressing procedural issues related to disciplining students with disabilities. In many instances, court decisions have become benchmarks for determining acceptable practices. Two pivotal Supreme Court decisions in 1975 limited the power of school authorities to discipline students without first utilizing due process procedures; an additional landmark Supreme Court case in 1988 outlined basic constitutional rights of students with disabilities related to education, equal protection, due process and placement procedures. Clearly the significance of these cases lies with the perception of school officials. The decisions were seen as an erosion of the schools' authority to maintain discipline and an increase of school officials' frustration. They believed the court left them "hamstrung" and unable to control disruptive, potentially violent students.

Complicating an already difficult sensitive area, the Individuals With Disabilities Education Act (IDEA) is silent regarding disciplinary matters. Different legal authorities, such as statutes, rules and regulations, court administrative decisions, state education agency policies, and interpretations by the U. S. Department of Education Office of Special Education Programs (OSEP) have different weight as they apply to special education law. Further, there has been little agreement between educational, legal and mental health professionals on how to address discipline issues systematically in the school environment. Simply put, there are no established guidelines for dealing with discipline problems. Despite the significant attention given to this topic and prevention issues, many serious concerns remain regarding effective discipline procedures for students with disabilities.

Many school officials have viewed education as a privilege that could be withdrawn when students violated disciplinary codes. Though the courts have obviously challenged the notion that public education is a privilege that can be unilaterally withdrawn by school officials, some school officials continue to look primarily at suspension and expulsion as the interventions of choice. A discipline mentality that singularly focuses only on punishment has generally resulted in unremarkable gains because effective discipline encompasses a broad category of techniques in which punishment is distinct. There must be a balance between a student's educational interest, needs, and personal security on the one hand, and the schools' view that accountability and consequences are essential to ensure a safe and productive learning environment that can focuses on providing opportunities for individual growth. This balance must focus on the safety and wellbeing of all students, while equally emphasizing accountability and the development of behavior/social competencies for individual students. Aggressive habits and unacceptable behaviors learned early in life are the foundation for later behavior. Social and cultural influences in early childhood may have lifelong impact. It is,

therefore, critical to acknowledge the importance of discipline issues at an early age and to redirect student toward acceptable and socially responsible behavior.

Regrettably, each step of the procedural minefield established by the courts, IDEA and Section 504 of the Rehabilitation Act subjects school officials to intense scrutiny and rather than being helpful, often freezes school officials in their attempts to address student needs on a continuum. Given the legal and educational principles involved, there is a significant need for the systematic investigation of the parameters of appropriate disciplinary practice for all students with disabilities. This synthesis is intended to provide information and choices founded in common, logical practice and is designed as a concise expression of discipline policy practices at the federal, state and local level; illustrative and preventive strategies to help avoid disciplinary conflicts will be outlined.

The topic of disciplining students with disabilities is extremely complex and any discussion must necessarily include many related educational and legal issues. The following outline of the major sections of this synthesis is provided to assist the reader in understanding the contents of this report:

The first portion of the report presents legal information including a background on the provisions of the two major federal laws affecting students with disabilities—IDEA and Section 504—and the similarities and differences in their application to matters of discipline. A separate section explaining suspension and expulsion is also included.

In the following section on policy implications, the issues of school climate and concerns related to staff performance, general and special education interface, and interagency matters are discussed.

The remainder of the report contains a discussion of school discipline plans and prevention strategies.

This synthesis references *Discipline in the School*, a detailed and comprehensive treatment of all aspects of the topics of discipline, by Eric P. Hartwig, Ph.D. and Gary M. Ruesch, Esq., LRP Publications, Horsham, Pennsylvania, 1994.

References:[1] *Honing v. Doe*, 479 U.S. 1084, 107 S. Ct. 1284, 94 L. Ed.. 2d 142 (1987) aff'd as modified, 484 U.S. 305, 108 S. Ct. 592, 1987-88 *EHLR* 559:231 (1988), 98 L. Ed.. 2d 686 (1986). *Mills v. Board of Education of District of Columbia*, 348 F. Supp. 866 (D. D. C.. 1972). *Wood v. Strickland*, 420 U.S. 308 (1975). *Goss v. Lopez*, 419 U.S. 565, 95 S. Ct. 729 (1975).

[1]Because of the nature of this topic, numerous legal and other citations must be made repeatedly to furnish sources for the content. To enhance the readability of the text, all references are listed throughout the paper at the end of each section.

LEGAL ASPECTS OF DISCIPLINE

Procedural Protections

Prior to the adoption of the Individuals With Disabilities Education Act (IDEA), the rights of students with disabilities stemmed from the U.S. Supreme Court decision in *Brown v. Board of Education*, which established the right to equal educational opportunities for all students. The *Brown* decision foreshadowed the principles of due process rights and least restrictive environment that were adopted by federal district courts nearly 20 years later. Essentially, the courts ruled in later cases that students could not be removed from the school because of their disabilities.

Basic Due Process Rights

Courts have given students basic procedural protections prior to being disciplined or deprived of the right to education for a significant length of time. All students without exception are entitled to certain due process rights prior to being disciplined or deprived of their right to an education. These procedural and substantive protections include:

1) A right to **free speech** if it is not disruptive to the school environment.

2) Right to **safeguards** before implementation of corporal punishment:
   - A) Student must be **warned** about conduct being inappropriate.
   - B) **Other means** of correction need to have been tried.
   - C) Someone needs to **observe** the punishment and must be **informed** of the reason of the punishment.
   - D) The individual who administers the punishment must provide, on parental consent an **explanation** of the reasons for the punishment and the **name** of the person who observed the punishment.

3) **Rights when suspended less than 10 consecutive school days:**
   - A) Student must be given **notice** of charges against them.
   - B) An **explanation** of the evidence must be given to the student.
   - C) An **opportunity** for the student to present an explanation of the incident must be provided.

4) **Rights when suspended for 10 or more consecutive school days:**
   - A) Student must be given **written notice** of the charges against them.
   - B) An **explanation** of the evidence must be given to the student.

C) An **opportunity** for the student to present an explanation of the incident must be provided.

D) The right to a **hearing** before an impartial body.

E) The right to **legal counsel**.

F) The right to **present, confront and cross-examine** witnesses presented by school officials.

Note: Specific requirements of state law must also be reviewed.

References: *Wood v. Strickland*, 420 U.S. 308 (1975). *Ingraham v. Wright*, 430 U.S. 651 (1977), *Bethel School District v. Fraser*, 478 U.S. 675 (1986). *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 89 S.Ct. 733 (1969), *Baker v. Owen*, 395 F. Supp. 294 (1975) (M.D.N.C.), aff'd, 423 U.S. 907 (1975), *Goss v. Lopez*, 419 U.S. 565, 95 S. Ct. 729 (1975) *Brown v. Board of Education*, 347 U.S. 483, 74 S. Ct. 686, 98 L.Ed. 873 (1954). *Mills v. Board of Education of District of Columbia*, 348 F. Supp. 866, *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania*, 334 F. Supp. 1257 (E.D. Pa. 1971), 343 F. Supp. 279 (E.D. Pa. 1972), *Brown v. Board of Education* , 347 U.S. 483, 74 S. Ct. 686 (1954).

Interrelationship Between Traditional Discipline Procedures and IDEA/504

School districts must ensure all applicable due process procedures are provided as required by state disciplinary codes IDEA and Section 504 of the Rehabilitation Act processes. Both IDEA and Section 504 regulate the procedural processes by which school officials are allowed to discipline students with disabilities. The range of disciplinary alternatives available to school officials are as broad as individual states allow and can be anything from verbal reprimands to corporal punishment; to complete exclusion from school contingent on alternative services being provided. Local school policies should be established that study and determine the order of disciplinary actions and the invoking of both the IDEA and Section 504 procedures.

References: *Hayes v. Unified School District No. 377*, 877 F.2d 809, 1988-89 *EHLR* 441:526 (10th Cir. 1989).

THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

The IDEA requires each State to provide free and appropriate special education services to a student with a disability according to an Individual Education Plan (IEP). The IDEA conditions federal financial assistance on a state's compliance with substantive and procedural requirements of the IDEA. Procedural safeguards provided include screening, evaluation, and the development of an appropriate individual education program (IEP) with subsequent placement determination based on the IEP.

References: *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982), 1981-82 EHLR 553:656.

Purpose of the IEP

The individualized education program (IEP) is the major focus of the IDEA's educational components and contains a written statement pertaining to a student with a disability that is developed and implemented in accordance with procedural requirements. Parents are equal participants with school officials in developing the IEP. The IEP process has a number of purposes and functions including:

1) To serve as a **communication system** for the determination of the student's individual needs, the services to be provided, and the anticipated outcomes of the process.
2) To provide an opportunity for **resolving differences** using discussion and procedural protections available to the parties involved.
3) To document the **commitment of resources** necessary.
4) To serve as a **management tool** to ensure that the student is provided services appropriate to their individual needs.
5) To monitor **compliance** with the IDEA.
6) To evaluate and determine whether or not the student's **needs are being met.**

References: 20 U.S.C. Section 1401 (19) (1991), *Sultan (WA) School District No. 311,* 16 *EHLR* 659 (OCR 1990), *Letter to Anonymous,* 17 *EHLR* 842 (OSEP 1991), 34 C.F.R. Sections 300, 301 (1992).

IEP Procedural Requirements

The IEP must adhere to various procedural requirements including those insuring that the IEP has been properly developed, that it has involved all necessary participants, and that it is regarded by both the parents and the local education agency as appropriate in terms of the student's needs. Additional procedural requirements include ample time allowances to ensure meaningful parental participation in IEP meetings, time constraints for IEP implementation, number of persons involved in the meetings, and the time and persons who may initiate the IEP meetings. The temporary placement of a student with a disability in a program as part of the evaluation process before the IEP is finalized may be acceptable provided that certain requirements have been met including parental consent, specifically outlined conditions and timelines for the trial period. The school and/or the parent may initiate the IEP meeting.

References: 20 U.S.C. Section 1401(19) (1991), 20 U.S.C. Sections 1412(4)(6), 1413(a)(4)(1991), 20 U.S.C. Sections 1412(2)(B),(4)6; 1414(a)(5)(1991), C.F.R. Sections 300, 301, 20 U.S.C. Sections 1412(2)(B), (4)(6), 1414 (a)(5) (1991).

Components of the IEP

The goals and objectives of the IEP need to focus on offsetting or reducing problems that have resulted from the disability and are interfering with the student's ability to acquire or produce skills in an academic environment; defined broadly to include social, emotional and behavioral skills. The IDEA mandates specific components which must be a part of any IEP.

1) A statement of the student's **present levels** of educational performance.
2) A statement of **annual goals** including short-term instructional objectives.
3) The special education and related **services to be provided.**
4) The **dates** and **duration** of the services.
5) **Evaluation criteria** and
6) A determination of the necessary **transition services,** if necessary.

References: 20 U.S.C. Sections 1401(19), 1412(2)(B)(u), 1412(6), 1414(a)(5) (1991), *Letter to Frost*, 18 *IDELR* 594 (OSERS 1991), 34 C.F.R. Section 300.346.

Best Practices in the IEP Process

The IEP Disciplinary Plan

Any restrictions or disciplinary plans that are created for an individual student with disabilities must address and recognize to the maximum extent appropriate:

1) **Opportunities** for interaction with age appropriate peers who do not have disabilities;
2) A **continuum** of placement alternatives in accordance with individual needs; and
3) **Appropriate placement** in the least restrictive environment selected from the available options, although not at all costs or to the detriment of the student or others.

Under certain circumstances, school officials may be required to develop a discipline plan consistent with a student's individual needs in order to meet the FAPE requirement of the IDEA. Such measures can be developed and implemented only after the IEP team determines the effect of the student's disability on behavior and reviews possible modifications to program and educational settings.

It seems logical then, that students with known propensities for misbehavior would best be served by having behavioral objectives incorporated into a discipline plan outlined

in their IEP. The objectives of such a plan for students with disabilities should be very specifically related to hourly, daily, weekly, and monthly accomplishments within specific methods, activities, and materials. Managing the moment is often the hallmark of an effective intervention plan, and the IEP can be efficiently used as a road map to effective change.

A disciplinary plan incorporated into the IEP with parental support and student participation (as appropriate) should outline behaviors that are prohibited, behaviors that are expected and positive and negative consequences for those behaviors. Such a plan will provide a clear indication of what will occur at the time of a critical behavioral event, including a continuum of alternatives. Incorporation of intervention techniques and/or discipline plans into the IEP will help to balance a student's needs with accountability and consequences for their actions, competency development and maintenance of a safe and productive learning environment. Naturally, a discipline plan built into the IEP must remain within the limits of common law, must be reasonable in light of its purpose and can entail no deprivation of the student's substantive rights. Interventions created should be based on individual needs, and the methodology to be used should reflect that individualization.

A disciplinary plan discussed in advance with the parent or guardian is more likely to meet with success in both the home and school. In addition, a disciplinary plan that is implemented as part of a student's IEP is less likely to be legally challenged by the parent, guardian or in some cases the school.

References: *School Administrative Unit #38*, 19 *IDELR* 186, 188, 189 (OCR 1992). *Shasta Union High School District*, 16 *EHLR* 482 (SEA Cal. 1990), *Syracuse (NY) City School District*, 16 *EHLR* 1405 (OCR 1990), *Northwest (IL) Suburban Special Education Organization*, 16 *EHLR* 1331 (OCR 1990), *Board of Education of Sacramento City Unified School District v. Holland*, 786 F. Supp. 874, 18 *IDELR* 761 (E.D.Cal. 1992). *New York City School District Board of Education*, 18 *IDELR* 501 (SEA N.Y. 1992), *Board of Education v. Rowley*, 458 U.S. 176 (1982), *Bencic v. City of Malden*, 32 Mass. App. Ct. 186, 582 N.E.2d 794, 18 *IDELR* 829 (1992). Council for Children with Behavioral Disorders, "Position Paper On Use of Behavior Reduction Strategies With Children With Behavioral Disorders, *Journal of Behavioral Disorders 15*,(4) (1990): 243-60, 34 C.F.R. Sections 300, 301. *Wells-Ogunquit (ME) Community School District No. 18*, 17 *EHLR* 495, 496 (OCR 1990).

Foreshadowing the Relationship of a Disability to Misbehavior

The multidisciplinary report completed as part of a student's evaluation, should include, at a minimum, three different descriptions of the student: a statement of the

primary disability, the educational manifestation[2] of the disability and accompanying behaviors not related to the disability. In developing distinctions related to the disability, the evaluation committee should analyze:

1) Specific behavioral manifestations of the disability,
2) Specific behavioral manifestations not related to the disability.

Although correlative behavior analysis is important and correlation is a necessary feature of a causal relationship, it is not sufficient to prove that a causal relationship exists. There must be some rational link between the behavior and the disability; causation must have a sense of place within a conceptual/behavioral framework.

Foreshadowing the causal or catalyst relationship between the student's disability and behavior is important for three basic reasons. First, such recognition directs the multidisciplinary evaluation and assessment team to focus on addressing future and potentially difficult situations by establishing specific consequences for anticipated behavioral difficulties. Secondly, anticipating how a student may behave in certain circumstances allows the IEP committee to look more closely at appropriate educational alternatives which, given parental approval, may prevent a critical behavioral event from occurring in the first place or allow the school to manage one if it does. Finally, evaluation data may be considered in a later manifestation determination meeting after a critical behavioral event occurs and disciplinary action is being considered by the district.

The importance of foreshadowing the behavioral manifestations of the disability and working with parents in developing alternative plans also incorporates appropriate procedural issues. Courts have routinely accepted the necessity for a school district to consider the behavioral needs of a student with a disability and the potential impact on other students when determining placement. School districts need to begin reviewing placement considerations in the general education classroom setting, with the use of supplementary aids and services before exploring more restrictive options. Working with the family through the development of an IEP allows and incorporates a continuum of options, which may prevent potentially explosive and untenable situations.

References: *Hacienda La Puente Unified School District v. Honig*, 976 F. 2d 487, 19 *IDELR* 150 (9th Cir. 1992), *Metropolitan School District of Wayne Township v. Davila*, 969 F.2d 485, 18 *IDELR* 1226 (7th Cir. 1992), *S-1 v. Turlington*, 635 F. 2d 342, 1980-81 *EHLR* 552:267 (5th Cir.), cert. denied, 454 U.S. 1030 (1981), *Christina School District*, 18 *IDELR* 996, (SEA Del. 1992), M. H. Epstein, R. Foley and D. Cullinan, "National Survey of Educational Programs for

[2]The term "manifestation" is used interchangeably in the field with similar terms such as "relationship,""connection,""association,""causation," and the like. They should be interpreted as having the same meaning.

Adolescents with Serious Emotional Disturbance." *Journal of Behavioral Disorders 17*(3), 202-210. U.I. Jones, "Integrating Behavioral and Insight Oriented Treatment in School Based Programs for Severely Emotionally Disturbed Students," *Journal of Behavioral Disorders 17*(3),225-36. *Christopher M. v. Corpus Christi Independent School District* , 17 *IDELR* 990 (5th Cir. 1991), *Chris D. v. Montgomery County Board of Education*, 743 F. Supp. 1524, 16 *IDELR* 1183 (M.D. Ala. 1990).

Parental Involvement

It is important that the development of an IEP include active parental involvement especially in the area of disciplining students with disabilities. Communication among parent, student and teacher is critical to sound educational planning and is basic to IDEA. When there is conflict between the school and the parents, an IEP may not be considered appropriate even if it would otherwise meet legal and educational standards. Encouraging parental involvement in the development of the IEP can only enhance the addressing of discipline issues. However, in some cases, the school district's statutory duty to the student may require invoking of due process procedures to override a lack of parental consent or support.

References: *Community Consolidated School District #21 Board of Education v. Illinois State Board of Education*, 18 *IDELR* 43 (7th Cir.), 1991. *In the Matter of a Child With Disabilities*, 19 *IDELR* 86 (SEA NH) 1992.

Relationship Between Misbehavior and Disability

School officials must look at an individual student's characteristics to determine whether the misbehavior manifested was related to the disability. Different processes are used to determine if the misbehavior of a student with a disability is caused by the disability, but such decisions must be made on the individual basis and not on the basis of a broad classification or generalization of a disability.

In defining a relationship between misbehavior and the disability, the issue of whether misconduct was the result of the student's inappropriate placement must also be addressed:

1) If the inappropriate behavior was a **direct manifestation** of the disability, additional intervention plans, alternative programming and other resources must be considered by the IEP committee.
2) If the inappropriate behavior was a result of an **inappropriate placement**, which could lead to more restrictive educational programming, the IEP committee must consider alternative educational programs and to make modifications accordingly.

References: *Tawnia L. v. Garrison ISD*, 16 *EHLR* 262 (SEA Tex. 1989), *S-1 v. Turlington*, 635 F.2d 342, 1980-81 *EHLR* 552:267 (5th Cir.), cert. denied, 454 U.S. 1030 (1981), *Doe v. Maher*, 793 F. 2d 1470, 1480 n.8, 1985-86 *EHLR* 557:353 n. 8 (9th Cir. 1986), aff'd as modified sub nom. *Honig v. Doe*, 484 U.S. 305, 108 S. Ct. 592 (1988), 1987-88 *EHLR* 559:231, *School Board of Prince William County (VA) v. Malone*, 762 F. 2d 1210, 1984-85 *EHLR* 556:406, 407, 410 (4th Cir. 1985), *Orinda Union School District*, 1986-87 *EHLR* 507:199 (SEA Cal. 1986), *Rowland Unified School District*, 1986-87 *EHLR* 508:149 (SEA Cal. 1986), *Elk Grove Unified School District*, 16 *EHLR* 622 (SEA Cal. 1989).

Additional Issues Under IDEA

Stay Put Requirement

The U. S. Supreme Court attempted to harmonize the procedural requirements of the IDEA with a state's traditional disciplinary power in the case of *Honig v. Doe*, where the San Francisco Unified School District indefinitely suspended two students with emotional disturbance for violent and destructive conduct caused by their disabilities. The Supreme Court ruled that the stay put provision of IDEA prohibits state or local school authorities from unilaterally excluding children with disabilities from the classroom for dangerous or disruptive conduct growing out of their disabilities, during the pendency of regular due process proceedings under IDEA.

Special Provision Concerning Weapons

Effective October, 1994, an amendment to the Improving America's Schools Act modified the requirements concerning the expulsion of students with disabilities who bring a weapon to school. The term "weapon" means a firearm as defined in Section 921 of Title 18 of the United States Code. According to this new law, a student with disabilities who brings a weapon to school could be placed in an interim alternative educational setting, in accordance with state procedures, for not more than 45 days. The addition of this 45 day placement would pre-empt "stay-put" requirements pending a due process hearing. At the time of this writing, there have been no agency or court interpretations of this recent change. Readers are advised to observe carefully any regulatory or court activity concerning this very important issue.

The Ten-Day Rule

The Court also discussed disciplinary alternatives and affirmed the ten-day rule, which provides that "where a student poses an immediate threat to the safety of others, officials may temporarily suspend him or her for up to ten school days," but not for a longer period. The Court reasoned that the ten-day rule allows school officials to protect the health and safety of others by removing dangerous students, while at the same time

allowing time for an IEP review and possibly a different placement. The use of other normal disciplinary procedures sanctioned by the court for students who are dangerous to themselves or others, include "the use of study carrels, time-outs, detentions, or the restriction of privileges."

Any exclusion from school for more than ten days, whether it be called a suspension, expulsion, transfer, or a medical leave, triggers the need for formal protection. The issue then becomes the point at which the ten-day line is crossed. Such answers differ from state to state and from district to district, and must be determined on a case by case basis.

Exceptions to the Ten-day Rule

Every legal rule has it exceptions. There are some situations where a student with a disability may not be suspended for ten consecutive days. A student with a disability may not be suspended for conduct that is caused by the disability and that does not endanger or disrupt the educational environment. Another exception results from a behavioral plan developed according to the procedures of Section 504 or the IDEA prohibiting the use of traditional suspensions. If such a plan expressly prohibits the use of suspensions, then they could not be employed as a result of misconduct involving that student under any circumstances. The final exception to the ten-day rule results when students with disabilities are treated more harshly than nondisabled students. Thus a student with a disability could not be suspended for a behavior which would not result in a suspension for a nondisabled student.

References: *Silver Lake (MA) Regional School District*, 16 *EHLR* 1213 (OCR 1990). *Honig v. Doe*, 484 U.S. 305, 108 S. Ct. 592 (1988), 1987-88 *EHLR* 559:231, *Doe v. Maher*, 793 F. 2d 1470, 1985-86 *EHLR* 557:353 (9th Cir. 1986), 20 U.S.C.A. Section 1415(e)(3) (1990). *Honig v. Doe*, 484 U.S. 305, 108 S. Ct. 592 (1988), 1987-88 *EHLR* 559:240. *OCR Staff Memorandum (Discipline)*, 14 *IDELR* 307:05 (OCR 1988).

Injunctions

The stay-put provision of the IDEA is invoked when a parent requests a due process hearing at the time a school district intends to expel a student with a disability. The placement of a student with a disability must remain the same until all proceedings seeking to change it are completed and, unless the parents and the school district agree, this does not preclude the use of extraordinary legal procedures for dealing with children who are endangering themselves or others. Obtaining a temporary restraining order as suggested in the *Honig* decision, is a viable alternative to consider for students who may

be dangerous to themselves or others. The courts have reasoned that IDEA does not prohibit a court from ordering, through an injunction, a change in the placement of a student pending a due process hearing. Unfortunately, this process is costly, cumbersome and often acts to dissuade school legal officials from implementing appropriate disciplinary sanctions with dangerous students. It is also critical that districts do not improperly circumvent the requisite administrative procedures of IDEA.

References: *Honig v. Doe*, 484 US 305, 108 S. CT. 592 (1988), 20 USC, 1415(e), *Board of Education of Township High School District No. 211 v. Linda Kurtz-Imig*, 16 *EHLR* DEC. 17 (N.D. Ill. 1989), *Board of Education of Township High School District No. 211 v. Corral*, 441 *EHLR* DEC. 390 (N.D. Ill. 1989), *Prince William County School Board v. Wills*, 16 *EHLR* DEC. 1109 (VA. Cir. Ct. 1989), *School Board of the County of Stafford v. Farley*, 16 *EHLR* DEC. 1119 (Va. Cir. Ct. 1990), *Texas City Independent School District v. Jorstad*, 752 F. Supp. 231 (S.D. Tex. 1990), *Binghamton City School District v. Borgna*, 17 *EHLR* 677 1991 W.L. 29985 (N.D. N.Y. 1991), *In re Tony McCaan*, 17 *EHLR* 551 (Ct. App. Tennessee, 1990), *In re Child With Disabilities*, 20 *IDELR* 61 (SEA TN, 1993).

Change of Placement

Discipline which results in a change in placement of the student is another issue of procedural and practical concern. For example, certain procedures and considerations need to be followed prior to the expulsion of a student with disabilities. A critical focus of these procedures is the determination of whether or not the student's IEP and placement at the time of the conduct were appropriate and whether or not the disability caused the conduct. As previously stated, pending the outcome of a due process hearing, the student shall remain in his or her current educational placement program unless otherwise agreed to by school officials and the parent.

Determining whether or not a disciplinary measure equals a significant change in placement must be considered on a case-by-case basis. Placement change occurs when a student with a disability is excluded for more than ten consecutive days, or when a series of suspensions are frequent enough to create a pattern of exclusions. Furthermore, a change in placement results when the IEP is altered so that "substantial programmatic modification" is made or when the new educational program is not comparable to the existing program.

Prior to a change in placement, the following steps must be taken:

1) **Organize multidisciplinary team** to determine if:
   - A) Further evaluation is needed.
   - B) Current placement appropriate.
   - C) Conduct was caused by disability, review previous manifestations information documented by evaluation team.
   - C) IEP should be modified.

2) Schedule a meeting of the multidisciplinary team including parents to **prepare a written report** to determine a casual relationship between conduct and disability.
3) Prepare a **notice** of placement change. (Note: Some states have procedures that involve both a multidisciplinary team and then an IEP team for placement.)
4) **Consider** complete new evaluation or new independent evaluation.
5) **Modify existing disciplinary procedures** for future use.
6) **Modify disciplinary recommendations** as necessary.
7) **Incorporate** changes into the IEP.

References: 20 U.S.C.A. Section 1415(e)(3)(1990), *In the Matter of a Child With Disabilities*, 18 *IDELR* 1318, 1322 (SEA Mich. 1992), *Rowland Unified School District*, 1986-87 *EHLR* 508:149, 151 (SEA Cal. 1986). 877 F.2d 809, 1988-89 *EHLR* 441:526 (10th Cir. 1989), *St. Mary's (PA) Area School District*, 16 *IDELR* 1156, 1158 (OCR 1990), *Letter to Rhys*, 18 *IDELR* 217 (OSEP 1991), *Lamont X. v. Quisenberry*, 606 F. Supp. 809, 1984-85 *EHLR* 556:437 (S.D. Ohio 1984), *Tilton v. Jefferson County Board of Education*, 705 F.2d 800, 1982-83 *EHLR* 554:513 (6th Cir. 1983), *Dima v. Macchiarola*, 513 F. Supp. 565, 1980-81 *EHLR* 552:438 (E.D.N.Y. 1981).

Integration Into the Classroom

The IDEA provides that states must ensure students with disabilities are educated in general education classrooms with nondisabled students "to the maximum extent appropriate." This is complicated by the fact that schools are also required to provide individualized programs tailored to the specific needs of each student with a disability. A student's integration into an environment which encourages the development or maintenance of interpersonal relationships with peers can have a substantial impact on the success of intervention plans established through the IEP. It is important that school districts provide a program that is tailored to the needs of the individual student. Integration must be of some particular gain for the student and have no significant detrimental effect on the education of others.

The education and integration of students with disabilities who have behavioral problems into general education classrooms with nondisabled peers to the maximum extent appropriate should be based on the following determinations:

1) Can general education placement be **satisfactorily achieved** with or without supplementary aids or services?
2) Can placement in a special education program provide students with **integrated educational opportunities** to the maximum extent possible?

A) Consideration for supplementary aids and services (resources rooms, speech language therapy and special education training for general education staff and behavior modification.
B) Efforts made to modify the general education environment to accommodate disabled student.
C) Educational benefits in the general education classroom compared to those of special education placement. The determination that a student with a disability might make greater academic progress in a segregated special education class may not warrant excluding the student from the general education classroom environment.
D) Non-academic benefits of interaction with nondisabled peers.
E) Possible negative effect of the student's presence in the general education classroom.
F) The cost of supplementary services required to maintain the student in the general education environment.

References: *Greer v. Rome City School District*, 950 F.2d 688, 18 *IDELR* 412 (11th Cir. 1991), 20 U.S.C. Sections 1401, 1412(5)(b), 1414(a)(5) (1991), *Oberti v. Board of Education of the Borough of Clementon School District*, 801 F. Supp. 1392, 19 *IDELR* 423 (D.N.J. 1992), F.2d (3d Cir. 1993), 19 *IDELR* 908, *Daniel R.R. v. State Board of Education*, 874 F.2d 1036, 1988-89 *EHLR* 441:433, (5th Cir. 1989), *Board of Education of Sacramento City Unified School District v. Holland*, 786 F. Supp. 874, 18 *IDELR* 761 (E.D. Cal. 1992), affirmed F2d (9th Cir 1993) *IDELR*, 1994 U.S. App. Lexis 1124.

Least Restrictive Environment

The requirement of least restrictive environment (LRE) is the major factor in determining if the selection of an exclusionary disciplinary measure is nondiscriminatory and appropriate on an individual basis. This requirement of the law has received increasing attention due to the recent trend toward the inclusion of students with disabilities in general education classrooms. States and school districts are developing policies on the topic of inclusion, and it is the focus of a number of appeals and pending court cases.

The mandated and qualified provisions of least restrictive environment include:

1) Placements must be individualized and **based on the IEP.**
2) Reviewed **annually.**
3) Selected from a full **continuum** of alternative placements.

Furthermore, eligible students are to be educated with non disabled students to the maximum extent appropriate, removed from general education only when an education in

that setting cannot be achieved, and be placed as close as possible to the their homes in the school which they would attend if not disabled unless the IEP requires differently.

References: 34 C.F.R. Section 300.552. [Comment: With respect to determining proper placements, the note at the end of this regulation quotes a Section 504 regulation: "It should be stressed that, where a handicapped child is so disruptive in a general education classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment therefore, regular placement would not be appropriate to his/her needs."

SECTION 504 OF THE REHABILITATION ACT OF 1973

Section 504 prohibits discrimination against individuals with disabilities under any program receiving federal financial assistance. Section 504 and the IDEA have certain significant differences as well as areas of obvious overlapping. Section 504 applies to recipients of any federal assistance and to each program or activity that receives or benefits from any such assistance. The IDEA, on the other hand, applies only to those states and their political subdivisions which receive payments under the IDEA. In order to be protected from discrimination in a school setting, a student must be able to be characterized as a person with a disability and must also be of an age at which a state is required to provide a free appropriate public education. An amendment to Section 504, the Americans With Disabilities Act, excludes students with disabilities who use or are in possession of alcohol or illegal drugs. However, students with disabilities may still be protected under the IDEA if they meet one of that law's 13 categories of eligibility since no such exceptions are provided.

References: 20 U.S.C. Section 794, 20 U.S.C. Section 1412(1) (1988), 34 C.F.R. Section 104.3 (k)(1)(2), *Letter to Parker*, 18 *IDELR* 963, 964-65 (OSEP 1992), 29 U.S.C. Section 706(8)(c)(iv) (West Supp. 1992), *OCR Staff Memorandum*, 17 *EHLR* 609, *Letter to Uhler*, 18 *IDELR* 1238, 1238-39 (OSEP 1992).

504 Regulatory Procedures

The following procedures must be implemented by school districts in order to comply with Section 504:

1) Provision of **free appropriate education** to all students with disabilities.
2) District must have in place a procedure for this purpose which includes all **procedural safeguards** identified in 34. C.F.R. Section 104.
   - A) A referral to the designated school official(s) must be made by teachers or administrators.
   - B) An evaluation must be conducted based on materials "validated for the specific purpose for which they are used". And must "include those tailored to access specific areas of education needs."

3) At least one person conducting the evaluation must be **knowledgeable** in the suspected area of disability.
4) Placement must be made by a "**group of persons** including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options."
5) Medical diagnosis/information **may be included**.
6) Educational needs must be **individually determined**.
7) If the student is found to be disabled under Section 504, **FAPE must be provided** in the least restrictive environment. Two standards exist for FAPE under Section 504:
   A) It must be designed to meet individual educational needs of students with disabilities as adequately as the needs of nondisabled students are met.
   B) It must be based on adherence to procedural requirements.

References: 34 C.F.R. Sections 104, 104.35(c).

504 Procedural Requirements

The following due process requirements must be met:

1) **Notice** of procedural safeguards to the parents or guardians of the minor student.
2) Opportunity for the parents or guardians of the student to **examine relevant records**.
3) Grievance procedures that include an **impartial hearing** with opportunity for participation by the student, parents, or guardians and representation by counsel.
4) **Procedure for review** of the educational plan.
5) Periodic **reevaluations** of the student.
6) **Timely** completion of the evaluation process.
7) **Notice of evaluation and placement** to the parents or guardians of the disabled student.
8) **Parental involvement** should be encouraged to improve the quality of the evaluation and subsequent potential services.

This individualized plan or accommodation plan provides the basis for written documentation of reasonable accommodations to meet the needs of students who are disabled under Section 504. Parental involvement on an equal basis with the school staff to develop an accommodation plan that meets the students' needs is especially important in the area of discipline.

504 Educational Requirements

Besides the nondiscrimination requirements, school districts are required by Section 504 to provide a free appropriate public education (FAPE) to each qualified student with a disability. This is defined to consist of general or special education and related aids and services that are designed to meet the individual educational needs of the disabled student as adequately as the needs of the nondisabled student.

The FAPE requirement of Section 504 has been interpreted differently from that of the IDEA in a number of ways. First, Section 504 allows fees to be charged to the student with a disability as long as such fees are also imposed on nondisabled students. Second, the extent of the services under Section 504 need include only those necessary to prevent or eliminate discrimination. Finally, although seemingly self-evident, those individuals who qualify under Section 504 with a record of a disability or a perceived disability would not qualify for educational services under Section 504 since these two categories are legal fictions i.e., those individuals are not actually disabled and therefore have no special education needs.

References: 34 C.F.R. Sections 104.33(a)(b)(c), *Letter to Zirkel*, 20 *IDELR* 134, 137 (OCR 1993), *Letter to Lyons and Smith*, 20 *IDELR* 164, 166 (D.C. 1993), *Staff Memorandum*, 19 *IDELR* 894 (OCR 1992).

Nondiscrimination Requirements in 504

Additionally, school officials must be careful to avoid using discipline measures which are discriminatory to students with disabilities, especially concerning students with less obvious disabilities such as AIDS. Disciplinary penalties for students with disabilities should be similar in nature and degree to those used for nondisabled students for similar offenses.

Disciplinary measures may be implemented within a framework or accommodation plan similar to the IEP, may not constitute a significant change of placement, and may not be applied discriminatorily against students with disabilities according to Section 504. Schools may be required to take remedial actions in order to resolve discriminatory complaints, including relocation of programs to a separate facility, adoption of new procedures, and instruction of staff regarding disciplinary measures.

References: *McCracken County (KY) School District*, 18 *IDELR*, 482-84 (OCR 1991), *Henrico County (VA) Public Schools*, 18 *IDELR*, 469 (1991), *Sumter County (SC) School District No. 17*, 17 *EHLR* 193, (OCR 1990)

Remedies Under 504

In addition to judicial remedies and a local grievance process including a due process hearing that must be available under school district policy, persons who believe that they have been discriminated against in violation of Section 504 may file a written complaint with the Office of Civil Rights (OCR) of the U. S. Department of Education. OCR is required to investigate promptly and, where a violation is likely to have occurred, to make an effort to resolve the matter by informal means. The matter may also be referred by OCR at its discretion to the United State Department of Justice for the commencement of legal action.

References: 34 C.F.R. Sections 100.7(b), 104.100.7(d)(2), 100.8(a)(d), *Sumter County (SC) School District No. 17*, 17 *EHLR* 193, 197 (OCR 1990). *McCracken County (KY) School District*, 18 *IDELR* 482-84 (OCR 1991), *Henrico County (VA) Public Schools*, 18 *IDELR* 469 (1991).

SUSPENSION AND EXPULSION

During the 1980's, school officials were forced to come to grips with statutory regulations relating to suspensions and expulsions of students with disabilities. Although the IDEA, Section 504, and their implementing regulations are reasonably detailed, they lack specific guidelines for the suspension or expulsion of students with disabilities. As a result, litigation has entangled school officials who attempt to balance the special education needs and rights of students with disabilities and the school's need to discipline disruptive students. This litigation and the threat of litigation has created a nightmare for school officials attempting to enforce traditional codes of student conduct.

References: 20 U.S.C.A. Section 1401 et Sec (West Supp. 1992), 29 U.S.C.A. Section 794 (West Supp. 1992), 34 C.F.R. Part 104 (1981), 34 C.F.R. Part 300.

Suspension Defined

A suspension is generally defined as a temporary cessation of educational services. State statutes regulate the allowable length of the suspension, the reasons for which a suspension can be ordered, and the procedure school officials must follow in implementing a suspension. A single suspension will be limited to a maximum of ten consecutive school days for purposes of this discussion.

Procedural Requirements for Suspensions

School officials are required to avail a student with disabilities basic due process rights prior to the implementation of suspension:

1) The student must be advised of the **reasons** for the proposed suspension and given an **opportunity to explain** their version of the incident prompting the suspension.
2) The parent or guardian of a suspended minor should be given **prompt notice** of the suspension and the reason for it.
3) The suspended student, parent or guardian may **appeal** the suspension to another school official.

Suspension of Students With Disabilities

Under normal circumstances, school officials may suspend a student with disabilities using the same procedures used for any other student. Courts have determined that the school's need to remove a disruptive child from the school environment (for ten days or less) outweighs the disabled student's entitlement to a free appropriate public education. Since the duration of the suspension is limited, it is normally not of a significant length to be considered a change in placement and the school is not required to determine if the misconduct is related to the student's disability.

References: *Honing v. Doe*, 484 U.S. 305, 108 S. Ct. 592 (1988), 1987-88 *EHLR* 559:231, aff'g as modified *Doe v. Maher*, 793 F.2d 1470, 1985-86 *EHLR* 557-353 (9th Cir. 1986).

Cumulative Suspensions

The circumstances of a series of suspensions which cumulatively approach ten days should be reviewed to determine whether or not a change in placement or other areas of the IEP or accommodation plan is appropriate. The Office of Civil Rights (OCR) outlines the following factors to be considered in determining whether or not a series of suspensions constitute a change in placement under Section 504, including:

1) The **length** of each suspension,
2) the **proximity** of the suspensions to one another,
3) and the **total amount of time** the student was excluded from the classroom.

OSEP has not yet stated a policy on the issue of counting suspensions within one school year as consecutive or cumulative. School districts that fail to follow the change in placement procedures required by Section 504 or the IDEA would be subject to liability.

References: 14 *EHLR* 307:06 (OCR 1988), *St. Mary's Area School District*, 16 *EHLR* 1156 (OCR 1990), 34 C.F.R. Section 104.35 (a).

Expulsion Defined

An expulsion is generally defined as a complete termination of educational services for an extended period of time and most logically of a longer term than a suspension. In many states school boards are given full discretion in determining the length of an expulsion. State laws generally specify grounds for which a school board may expel a student and set a legal and procedural framework for making the determination. State law also determines whether or not alternative educational services must be provided to a student who has been expelled.

Procedural Requirements for Expulsion

Since expulsion from school takes a way a student's right to an education that is guaranteed by the state, an expulsion hearing and due process protections of the United States Constitution must be accorded students prior to a school's decision to expel. The due process protections for students include:

1) **Written notice** of the expulsion hearing to both the student and parents, including the reasons for consideration of expulsion and an explanation of the student's right to legal counsel.
2) An **impartial decision-making body** must conduct the expulsion hearing and determine guilt or innocence and the penalty.
3) There must be a **provision for appeal** to a state educational agency and/or review by a state court.

Reference: *Carey v. Maine School Administrative District No. 17*, 17 EHLR 559 (1990), *Goss v. Lopez*, 419 U.S. 565, 95 S. Ct. 729 (1975).

Change of Placement Expulsion

Unlike short-term suspensions, expulsions in excess of ten days are considered a change in placement and require that change in placement procedures under the IDEA and Section 504 be followed for students with disabilities. A critical focus of these procedures is the determination of whether or not the student's IEP and placement at the time of the conduct were appropriate and whether or not the disability caused the conduct.

References: *Honing v. Doe*, 484 U.S. 305, 108 S. Ct. 592 (1988), 1987-88 *EHLR* 559:231, 34 C.F.R. Sections 300.345, 104.35, *Letter to Steinke*, 13 *EHLR* 213:179 (OSEP 1988).

Interrelationship of IDEA and Section 504 Procedures in Expulsion

The interrelationship between traditional expulsion procedures and the procedures required by the IDEA or Section 504 is not entirely clear. Attention must be given to both sets of procedures to ensure that all applicable procedural due process is provided by both or a combination of processes. How or when the traditional expulsion process is implemented with the necessary procedures under the IDEA or Section 504 is a matter left to state legislators or to the school district if the state is silent. Generally, OCR under Section 504 would not second-guess or review under Section 504 any disciplinary action if full rights were provided to the student. As noted earlier, a critical focus of these procedures is the determination of whether or not the student's IEP/accommodation plan and placement at the time of the conduct were appropriate and whether or not the disability caused the conduct.

References: *Vacaville (CA) Unified School District*, 18 *IDELR* 423 (OCR 1991), *Christina School District*, 18 *IDELR* 996 (SEA Del. 1992), *St. Marys (PA) Area School District*, 16 *EHLR* 1156 (OCR 1990).

Checklist for Expulsion

The following is a checklist for such procedures and considerations to be followed prior to the expulsion of a student with a disability:

1) Determine if there is a need to consider an **emergency or immediate interim placement** for a student who is a danger to self or others. {**Note:** See special provision concerning **weapons** on page 10}
2) **Prior to any change** in placement:
   - A) Organize the multidisciplinary team or other group of trained and knowledgeable staff to **make the following determinations**:
     - a) Is student's current **placement appropriate**? If Yes, is the unacceptable conduct caused by the inappropriate placement?
     - b) Is **conduct caused** by the student's disability?
     - c) If the answer to any of the above is Yes, then how should the IEP/accommodation plan be **modified**? Should it include a disciplinary plan or require a change in placement?
     - d) Are any **additional evaluations** necessary to make the above determinations?
   - B) **Prepare notice of expulsion** which includes a description of the change in placement and which meets the requirements of the IDEA or Section 504.

C) **Schedule a meeting** with all team participants (including the parents of the student being considered for expulsion) to prepare a written report.

D) Provide for **additional evaluation** or independent evaluation of the student if past evaluations are inadequate or out-of-date.

3) **Modify existing disciplinary procedures:**

A) Incorporate the new report of the **multidisciplinary team** and its recommendations.

B) **Interview** additional witnesses or representatives to address the student's disability and educational needs.

4) **Modify the disciplinary determination:**

A) **Prepare a finding** based on the multidisciplinary team's report--accept, modify, or reject its recommendations.

B) **Delay implementation** of expulsion order pending the parents' opportunity to appeal (at least ten days).

C) Determine if provision of alternative education program is **consistent** with discipline and the student's needs.

References: 34 C.F.R. Sections 300.345, 104.35, *Letter to Steinke*, 13 *EHLR* 213:179 (OSEP 1988), *Letter to Boggus*, 20 *IDELR* 625 (1993).

Last Minute Referrals

In the event in which a student's parent or teacher requests an evaluation of the student under the IDEA or Section 504 on the day of the expulsion hearing, the evaluation process must be initiated and completed with all due speed. In the event a qualifying disability is found, an IEP or Accommodation Plan under Section 504 should be immediately developed and implemented. As an alternative, a district may hold the expulsion in abeyance pending the results of the evaluation, with the child either remaining in school or receiving alternative educational services. It is critical that, upon a determination that the student has a disability, substantive and procedural rights under the IDEA and Section 504 be extended. School officials may deny assessment contingent on offering reports to a hearing.

References: *Mrs. A.J. v. Special School District No. 1*, 478 F. Supp. 418 (Minn. 1979), *Doe v. Rockingham County School Board*, 658 F. Supp. 403 (W.D. Va 1987).

Termination of Related Services

The termination of a related service is sometimes considered as part of a disciplinary program. If the suspension of a related service such as transportation effectively causes the student to be denied educational services, the suspension would be analyzed in the same manner as a suspension or expulsion of a disabled student. However, merely changing the method of transportation will not usually constitute a change in placement. It has been suggested that complete cessation of a related service such as transportation for more than ten school days for conduct caused by a student's disability constitutes a change in placement. Yet, OCR has declared that Section 504 allows for the termination of related services where the conduct for which termination is being considered is not caused by the student's disability.

References: Mobile County (AL) School District, 18 *IDELR* 70 (OCR 1991), *DeLeon v. Susquehanna Community School District*, 747 F.2d 149 (3d Cir. 1984), *OCR Staff Memorandum (Discipline)*, 14 *EHLR* 307:05 (OCR 1988).

SUMMARY OF DISCIPLINE PROCEDURES FOR STUDENTS WITH DISABILITIES

Generally, student discipline is a state and local matter. Each state and its local school districts must make a free appropriate public education (FAPE) available to children with specified disabilities. A continuum of alternative placements must be made available to the extent necessary to implement each student's individual education program.

Procedural safeguards guarantee parents an opportunity for meaningful input and review of all decisions affecting their child's education is clearly required. During the course of any authorized review proceeding, a student remains in their current educational placement unless the school district and parents agree otherwise.

An exclusion of a student with a disability from school for longer than ten days constitutes a change in placement. The parents must be given written prior notice of the proposed placement change including the explanation of applicable procedural safeguards and due process rights should they wish to challenge the proposed placement decision. In that regard:

1) School officials may use normal disciplinary procedures including temporary suspension for **up to ten school days**. If a removal of a student with a disability from school for a period of up to ten school days is being

contemplated, no prior determination as to whether the student's misconduct is related to the student's disability is required.

2) Additional techniques, including, but not limited to, study carrels, timeout and restriction of privileges would be permissible to the extent that they would **not be inconsistent with the child's IEP.**

3) **During a ten-day suspension**, school officials may initiate a review of a student's IEP, seek to persuade the family to agree to an interim placement or invoke the aid of the courts to remove a dangerous student from school if they believe that maintaining that student in the current placement is substantially likely to result in the injury to the student or others.

4) A suspension or disciplinary removal of a student with a disability for **more than ten days**, which constitutes a change in placement and may not be imposed without specific procedural steps including:
   - A) Determination by a group of persons that the student's misconduct is a manifestation of the student's disability. The meeting must meet regulatory requirements of an IEP meeting, requirements for making a placement decision and must include, or make an attempt to include, an agency representative of the student's teacher, the student's parent and if appropriate, the child.
   - B) The school must document all aspects of this process.
   - C) The purpose of the meeting is to determine if any connection exists between the student's disability and the behavior. If the behavior is not related to the disability, the student can be suspended for more than ten days, but this is defined as a change of placement.

5) The manifestation determination must be made on a **case by case basis**, in light of the circumstances and particular facts and not on the basis of the disability category.

6) If the group determines that the student's misconduct is a manifestation of the student's disability, the student **may not be suspended** for more than ten school days.
   - A) If misconduct is related to the disability, appropriate review of the student's placement and possible changes in placement may be reviewed and implemented subject to applicable procedural safeguards.

7) If the behavior is **not related to the disability**, the student can be suspended for more than ten days, but this is defined as a change in placement.
   - A) The parent must be notified, they must agree to the change if state regulations require it and the school still must provide FAPE to the student that is designed by an IEP team. The only requirement that a

school does not have to meet is LRE, services can be delivered at home or anywhere else.

8) School officials may invoke the **aid of courts** to remove dangerous students.

The manifestation review process is extremely problematic because the analysis usually takes place after a critical behavioral event. Although an interrelationship between the student's behavior and disability is a necessary feature of a causal relationship, it is not sufficient to prove that a causal relationship exists. There must be some rational link between the relationship of behavior and the disability. Foreshadowing the educational manifestation of the disability through a comprehensive analysis can facilitate the manifestation determination. The determination of what services need to be provided during a suspension or expulsion continues to be an issue and a point of disagreement specifically highlighted by the recent dispute between OSEP and the Virginia Department of Education.

OSEP believes that a student does not lose the right to FAPE because of suspension or expulsion. However, the one component requirement that the school does not have to meet is LRE, so services can be delivered at home or anywhere else. Additionally, for any student who is in the stage of referral, according to OSEP, all rights and privileges under IDEA apply until that student has been found not to be eligible. This includes the stay put provision requirement that a student remain in the current placement until a change is agreed to according to the regulations.

References: *Letter to Boggus*, 20 *IDELR* 625 (1993).

POLICY IMPLICATIONS OF DISCIPLINE

Evidence suggests that discipline problems arise primarily from individuals in combination with, but not limited to, poorly defined expectations from parents and teachers, illogical consequences, lack of interest, forced group behavior, limited positive reinforcement, a desire to get attention, and poor self-concept. Furthermore, many schools do not clearly indicate to students which specific behaviors are considered inappropriate and will result in specific consequences.

Discipline Defined

Discipline as a concept encompasses a broad category of techniques of which punishment is only one. Discipline also incorporates, for example, intervention plans that include motivation techniques such as positive reinforcement, social skill training for

students, and development of problem-solving and decision-making skills. In order to be effective, school discipline plans must differentiate between misconduct, defined as a student behavior that is unacceptable to school officials but does not violate criminal statutes (including absenteeism, tardiness, bullying, and inappropriate language), and crimes which are defined as illegal acts by federal and state statutes or local ordinance (including arson, assault, vandalism, extortion and possession and use of alcohol, drugs, or weapons). In the development of a comprehensive school discipline plan, school officials need to be cognizant of illegal activities, but must remember that the primary responsibility for addressing those activities rests with the courts and law enforcement agencies.

References: S. Braaten, R. Simpson, J. Rosell , and T. Reilly, "Using Punishment With Exceptional Children: A Dilemma For Educators," *Teaching Exceptional Children* (Winter 1988): 79-81, National School Safety Center, *School Safety Check Book* (Malibu, Cal.: Pepperdine University Press, Aug. 1990), 107-139.

School Climate

As a component of overall school climate, leadership is one of the most important elements affecting a school's organizational performance. Effective leadership can promote the development of appropriate educational alternatives. The first step in making a positive change in school climate is recognizing that a top-down organizational style may be ineffective because it limits the input of the classroom teacher. Encouraging a bottom-up or collaborative process allows for participation of those classroom teachers who deal with the day-to-day problems and who are expected to work with the students.

Regular communication between the schools, community organizations and community agencies can facilitate the critical support necessary for educational decisions about discipline policies. Poorly developed communication systems and a negative school climate can affect the public's perceptions of the schools. Any negative publicity, even if inaccurate, can have a devastating effect on how the public views the schools. It is important for schools to counteract such negative reports with a strong public relations approach to inform the community of positive activities and accomplishments and this is no more critical than in the area of discipline.

References: A.D. Szilagyi and M.J. Wallace, *Organizational Behavior and Performance*, 5th ed. (Glenview: Scott Foresman/Little, Brown Higher Education, 1990), 254-302, C.C.Carson, R.M. Huelskamp, and T.D. Woodall, *Perspectives on Education in America* (Albuquerque, N.M.: Sandia National Laboratories, 1991), Annotated Briefing, Third Draft, S.M. Elam, L.C. Rose, and A.M. Gallup, *The 26th Annual Gallup Poll of the Public's Attitudes Towards the Public Schools*, (Phi Delta Kappa Educational Foundation, 1994), J.A. Black & F.W. English, *What They Don't Tell You In Schools of Education About School Administration* , (Lancaster,

PA: Technomic Publishing Co., Inc., 1986), 8-10, L.J. Stinnete, "Decentralization: Why, How And Toward What Ends," in *Policy Briefs* (Oak Brook, IL: Northcentral Regional Educational Laboratory, Report 1, 1993), 1-23, Council of Administrators of Special Education Executive Committee, *CASE Future Agenda for Special Education: Creating a Unified Education System* (Albuquerque, NM: CASE, 1993), T.J.Sergiovanni, "Why We Should Seek Substitutes for Leadership", *Wisconsin School News* (July 1992): 8-13, J.O.Stampen, "Improving the Quality of Education: W. Edwards Deming and Effective Schools, " *Contemporary Education Review 3* (1987): 423-433.

Staff Performance Concerns

The importance of developing comprehensive discipline plans is second only to the importance of having adequately trained staff who can intervene effectively and with the confidence that they are supported in those interventions. When reviewing methods for dealing with discipline problems, school officials must ensure that staff are trained to follow appropriate procedures and that no improper discrimination occurs. Applying disciplinary alternatives while ignoring the effects of the current school environment and the level of competence of the teaching staff may result in inappropriate programming and student exclusion from functionally inadequate settings.

References: W. Mansfield, E. Farris, and National Center for Education Statistics, *Teacher Survey on Safe, Disciplined and Drug Free Schools* (Westat, Inc., Feb. 1992), 1-22, L.J. Johnson and M.C. Pugach, "The Classroom Teacher's View of Intervention Strategies for Learning and Behavior Problems: Which are Reasonable and How Frequently Are They Used," *Journal of Special Education 24* (1990): 69-84. Council of Administrators of Special Education Executive Committee, *CASE Future Agenda for Special Education: Creating a Unified Education System* (Albuquerque, NM: CASE, 1993).

General and Special Education Concerns

The entitlement of appropriate educational programs for students with disabilities has often given rise to communication difficulties between general and special education staff who seem to work on separate, parallel paths. School administrations need to encourage all teachers to serve all students regardless of their needs. An important, but difficult, first step for general education classroom teachers is accepting ownership and responsibility for what occurs in the classroom. Unfortunately, the complex rules and regulations designed to provide FAPE for students in the least restrictive environment often separate general and special education staff. Staff development must address the building of cooperative team programming to end their sense of isolation and help teachers feel they are part of something greater.

References: A. Gartner and D. Lipsky, "Beyond Special Education: Toward a Quality System For All Students," *Harvard Educational Review* 57 (1987): 372, A.D. Bowd, "Promoting Regular Classroom Integration: The Limitation of Least Restrictive Environment," *CASE in Point 6* (1991): 14-18, R.S. Neel and K.K. Cessna, "Instructionally Differentiated Programming: A Needs Based Approach for Students with Behavioral Disorders," in *Behavioral Intent: Instructional Content for Students with Behavioral Disorders* (Denver: Colorado Department of Education, 1993), 31-39, House, Zimmer, and McCinerney, "Empowering Teachers Through the Intervention Assistance Team," *CASE in Point* (Winter 1991): 5-7.

Interagency Concerns

The establishment of mutual responsibilities for implementing coordinated services for students with disciplinary problems requires regular communication between school, law enforcement agencies, juvenile court personnel, the Department of Social Services, and other relevant agencies. This communication is an important and useful goal as long as the communication links are not used as a means to circumvent administrative processes. School officials must remember that the school district is not acting in isolation, even though it may have the responsibility for coordinating all necessary resources. The obligation for the provision of an adequate program to meet all needs of all students with challenging behaviors is a districtwide, community responsibility. It is important in interagency planning that a creative network is developed to collectively address the system of services in order to coordinate and balance all student and family needs.

References: Virginia Association of School Superintendents, "Recommendations for Action by the Educational Summit," in *Violence in Schools* (Charlottesville, VA: VASS, Oct. 1992), 1-32, Battle Creek (MI) Public Schools, 16 EHLR 665 (OCR 1990), Matter of Ruffel P., 582 N.Y.S. 2d 631 (N.Y. Fam. Ct. 1992), 18 *IDELR* 1171; In re McCann, 17 IDELR 551 (Tenn. Ct. App. 1990), M. McLaughlin and S. Warren, *Issues and Options in Restructuring Schools in Special Education Programs* (College Park, MD: University of Maryland in affiliation with West Stat Inc., 1992), 30, B.A. Stroul and R.M. Friedman, *A System of Care for Severely Emotionally Disturbed Children and Youth* (Washington D.C.: CASPP Technical Assistance Center, Georgetown University Child Development Center, 1986), C.M. Nelson and C.A. Pearson, "Integrating Services for Children and Youth with Emotional and Behavioral Disorders," in *Current Issues in Special Education 1991* (Reston, VA: Council for Exceptional Children, 1991).

SCHOOL DISCIPLINE PLANS

In order to counteract the confusion that has resulted from the interpretation of the law in various court decisions and the lack of guidance provided by the IDEA and Section 504, school officials need to be cognizant of disciplinary alternatives that are available.

An effective school discipline plan requires cooperative understanding of what needs to be accomplished with students who display unacceptable behaviors. The most significant part of an effective intervention plan is preparation. Furthermore, successfully remediating behavior while simultaneously providing the opportunity to learn new, appropriate, and adaptive behaviors requires a combination of intervention approaches. The responsibility for the successful implementation of a comprehensive discipline plan rests within the school environment and ultimately, with the classroom teacher who must balance the school's educational expectations, the student's needs and interests, and legal requirements.

It is logical, but often forgotten, that all students do not respond exactly alike to the same procedures; therefore, it is necessary to customize intervention techniques to deal with individual differences, regardless of the degree of those differences. The elements that comprise intervention plans must further be in harmony with legal requirements. More importantly, intervention plans must offer a continuum of positive educational alternatives to ensure that there is some type of a change in behavior. Such an approach is critical in identifying, defining, and subsequently remediating emotional or behavioral difficulties characterized as discipline problems. The intervention chosen must balance the schools need to maintain a safe and productive learning environment with student accountability and competency building.

Unquestionably, there is a need to provide adequate and appropriate information about all aspects of the discipline issue for teachers and administrators. Preservice and inservice training are critical to enable school personnel to acquire the skills and knowledge necessary to develop effective school and district level discipline plans.

Developing a Districtwide Discipline Plan

There are some useful precepts to consider when developing a districtwide discipline plan or strengthening an existing discipline policy.

1) Ignorance of the law is **no excuse** for the use of inappropriate discipline techniques or intervention plans.
2) Local school boards are accorded a **wide latitude** in disciplinary regulation if the construction of the rules have been substantially well developed.
3) The behavior of a student must specifically **disrupt** the school environment.
4) Students have a **property interest** protected by the due process clause of the Fourteenth Amendment. It is important to emphasize the concept of fairness in the competing interests of the student and the school system.

5) Proper conduct in the classroom and education are **inextricably intertwined.**

6) Recognizing the relationship between a student's misconduct and their disability requires **intensive analysis.** It is essential that the multidisciplinary evaluation and assessment team and the IEP committee are comprised of individuals who are knowledgeable about a student's social, emotional, and behavioral needs.

7) The IEP that is developed should be **reasonably calculated** to allow the student to achieve some level of benefit.

8) The **inadequacy of resources** is not an acceptable excuse for providing inappropriate discipline to a student.

9) The **stay-put** provision applies. A student will remain in his or her current educational program pending a hearing outcome, although the school may seek injunctive relief to remove from the classroom students who are a danger to themselves or others.

10) The discipline approach used cannot have the **effect of denying** a student a free and appropriate public education.

11) School districts may need to **make modifications** to the general education classroom in order to develop appropriate discipline plans.

12) Districts need to keep in mind their obligation to consider **supplemental aids and services** to accommodate a student with a disability in the general education classroom.

13) School districts need to provide a full range, or **continuum**, of alternatives for educational programming.

14) **Drug and alcohol** use by students with disabilities is a significant issue and may provide an exception to the traditional protection afforded to students.

References: *Wood v. Strickland*, 420 U.S. 308 (1975), *Board of Education v. McCluskey*, 458 U.S. 966 (1982), *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), *Goss v. Lopez*, 419 U.S. 565 (1975), *Doe v. Maher*, 793 F.2d, 1470 (9th Cir. 1986), *Stuart v. Nappi*, 443 F. Supp. 1234 (D. Conn. 1978); *S-1 v. Turlington*, 635 F.2d 342 (5th Cir. 1981); *Doe v. Koger*, 480 F. Supp. 225 (N.D. Ind. 1979), aff'd, 710 F.2d 1209 (7th Cir. 1983), *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 1981-82 *EHLR* 553:656 (1982), *Mills v. Board of Education of District of Columbia*, 348 F. Supp. 866 (D.D.C. 1972), *Honig v. Doe*, 484 U.S. 305, 1987-88 *EHLR* 559-231 (1988), *McCracken County (KY) School District*, 18 *IDELR* 482 (OCR 1991), *School Administrative Unit No. 38*, 19 *IDELR* 188 (OCR 1992), *Greer v. Rome City School District*, 950 F.2d 688, 18 *IDELR* 412 (11th Cir. 1991), *Chris D. v. Montgomery County Board of Education*, 743 F. Supp. 1524, 16 *IDELR* 1183 (M.D. Ala. 1990), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794(a) (1992).

Characteristics of Comprehensive School-wide Discipline Plans

Effective discipline policies and procedures must adhere to current state and federal laws or rules, including statutes governing the use of suspensions, expulsions, and corporal punishment. Furthermore, policies should outline in detail intervention techniques, programmatic alternatives, or other procedures which are specifically prohibited. Essentially, school officials need to:

1) Conceptualize, describe, and **operationalize specific school tasks** and skills required of students in social and behavioral areas.
2) **Differentiate** between behavior pathology and a wide range of normal behavior to ensure early identification and facilitate intervention on an individual basis.
3) Provide **systematic observation** of a student's behavior.
4) Promote the development of **effective group classroom management** techniques by teachers to students, and create individual behavioral management programs tailored for each student on a need basis.
5) **Individualize** instructional programs based on the general education class curriculum which lead to a student's acquisition of demonstrated and proven academic skills.
6) **Train parents** in the support skills necessary for working effectively with the student in cooperation with the school. Parental involvement needs to move toward a shared-choice consumer model which is designed to help teacher, student, and families to work as a team to contribute to the development of educational programs, with increased sharing of educational information between all parties.
7) **Provide assistance** and direction to general education teachers to facilitate appropriate integration of students with disabilities.
8) **Distinguish** between educational and legal procedures.
9) **Develop agreements** between agencies within the community including, but not limited to, representation from social services, mental health services, alcohol and chemical dependency treatment centers, law enforcement agencies, and Social Service agencies.
10) Develop effective unambiguous discipline policies and procedures that **conform** to applicable state and federal statutes, due process, equal protection and related issues.

References: M. Weber, A. Chambers, B. Lang, J. Orlenko, and D. Schwichtenberg, *Components of Effective Programs for Emotionally Disturbed Children* (Sheboygan, WI: Sheboygan Area School District, June 1983), 27-32, National School Safety Center, *School Discipline Notebook* , rev. ed. (Malibu, CA: Pepperdine University Press, 1992).

Balancing Legal, Theoretical, and Practical Intervention Techniques

In an attempt to balance legal, theoretical, and practical intervention techniques, a comprehensive school policy needs to be formally established and adopted. This disciplinary policy should include:

1) A comprehensive school discipline plan that outlines **response strategies** for specific behaviors.
2) The utilization of a **multidisciplinary team/teacher assistance team** for dealing with discipline problems, identifying behaviors and coordinating intervention and behavioral plans.
3) An **understanding** of the discipline plan, its implementation, and contingencies.
4) **Constructive communication** between all parties. Inappropriate behavior of the student must be depersonalized in order to avoid interference with the staff's ability to make objective and effective decisions.
5) There also needs to be a **differentiation** between the processes that are followed for state and federal statutory requirements and educational processes for instructional responsibilities.

PREVENTION STRATEGIES

Intervention Techniques

The application of a prescriptive intervention approach emphasizes the value of designing multiple intervention techniques that maximize remedial effectiveness in advance, since no single intervention is equally effective for all students and all types of problems. Intervention techniques chosen should be:

1) **Commensurate with the severity** of the inappropriate behavior
2) Determined on a specific **case-by-case** basis; and
3) In all cases, **documented** on the IEP or accommodation plan.

A basic assumption in educational psychology emphasizes that students' affective and cognitive functions are intertwined. Effective teaching that promotes improvement in academic skills directly leads to improvement in nonacademic behaviors that is reciprocal. By carefully planning and structuring the classroom environment through clearly defined classroom rules and expectations, instructional arrangement, and organizational procedures that facilitate learning, teachers can effectively prevent many maladaptive, disruptive, and unproductive behaviors. Situational planning techniques must be emphasized: preventive

planning, anticipating problems, and making accommodations and modifications are more beneficial than an unprepared emotional response to a recalcitrant student. Yet, the management of challenging behaviors is often based exclusively on intervention techniques chosen at the time of a crisis or a critical behavior event.

Students' problems, when not addressed at an early age, can result in sophisticated behavioral difficulties because inappropriate actions have been inadvertently reinforced and are not now readily amenable to change. A valuable window of opportunity during which the problem is more likely to be resolved initially is often lost. Early intervention and addressing critical behavioral events by utilizing a teacher assistance team or a multidisciplinary team complements efforts at prevention by breaking the cycle of misbehavior. Furthermore, teachers who address behavioral problems at an antecedent level ultimately devote less class time to behavioral issues and more time to task and academic lessons.

References: T.R. McDaniel, "The Discipline Debate: A Road Through the Thicket," *Educational Leadership*, (March 1989): 81-82, *Burke County Board of Education v Denton*, 895 F.2d 973, 16 *EHLR* 432 (4th Cir.. 1990), Department of Human Services, Division of Developmental Disability, 16 *EHLR* 842 (SEA N.J. 1990), *Waechter v. School District No. 14-030*, 773 F. Supp. 1005, 18 IDELR 134 (W.D. Mich. 1991), C.E. Schafer and H.L., Millman, *Therapies for Children*, (San Francisco: Jossey-Bass, 1983): 1-12, *Ryne v. Childs*, 359 F. Supp. 1085 (N.D. FL 1973), G.F. Render, J.M. Padilla, and H.M. Krank, "What Research Really Shows About Assertive Discipline," *Educational Leadership* (March 1989): 72-75, H.F. Clarizio, *Toward Positive Classroom Discipline*, 3d ed. (New York: Macmillan Co., 1986), 8, R. Petty, "Managing Disruptive Students," *Educational Leadership* (March 1989): 26-28.

Role of the Classroom Teacher

The importance of the classroom teacher cannot be denied, since it is the teacher's observation that helps to identify inappropriate behavior in the classroom. Furthermore, it is the classroom teacher who establishes the relationship between events in the school environment and the consequence of the student's challenging behavior. The classroom teacher can carefully observe behavior in a variety of environmental conditions to:

1) **Identify and define** problem behavior.
2) **Identify events and circumstances** associated with the problem behavior and
3) Determine potential **functions** and ramifications of the problem behavior.

The classroom teacher can develop intervention techniques either to modify events or circumstances associated with the problem behavior or to teach alternative behavior.

Furthermore, evidence shows that encouraging effective peer relationships can facilitate social development and self-efficacy, enhance self-esteem, and create more opportunities for incidental learning.

References: R.E. Shores, et al. "Classroom Interactions of Children With Behavior Disorders," *Journal of Emotional Behavior Disorders 1* (1993): 27-39, L. Johnson and G. Dunlap, "Using Functional Assessment to Develop Effective, Individualized Interventions for Challenging Behaviors," *Teaching Exceptional Children 25* (Spring 1993): 44-50, R. Fox and D. McNeil, "Development of Social Skills," in *Issues in Special Education*, ed. A. Rotatori, M. Bandberry, and R. Fox (Mountain View, CA: Mayfield, 1987): 204-17.

Continuum of Alternatives

School districts are required to have available a continuum of alternative placements, including general education classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. The student is offered a placement in the least restrictive environment which is appropriate to the student's individual needs. Too often, disciplinary problems of a student rise to crisis levels because school districts lack a full continuum of alternatives capable of addressing students' needs at their inception.

References: 34 C.F.R. Sections 300.14(a)(1), 300.551(a), 300.551(b)(1).

Common Behavioral Techniques

There are a variety of management strategies that, when implemented consistently, are considered useful in maintaining appropriate behavior and changing undesirable or unacceptable behavior. Behavioral intervention techniques generally focus on observable behavior rather than emotions and feelings. The initial goal is to change behaviors that can be controlled by the application of consequences, but internal control issues must also be recognized in the context of improving feelings and emotions so that behaviors learned are eventually and inherently self-reinforcing. A common behavioral technique can be easily written into a behavior plan documented on a student's IEP.

One technique is the use of reinforcement contingencies. Positive reinforcement acknowledges an activity, task, or social requirement that is well done. The utilization of negative reinforcement is the contingent removal of some unpleasant stimulus. The simple application of both positive and negative reinforcement techniques can have a significant effect on students' behavior. Extinction techniques center on the removal of any acknowledgement or positive reinforcement of activities. Ignoring behavior as an extinction process uses consistent non-reinforcement of an undesirable behavior as an

effective means to reduce or eliminate that behavior. Another technique involves contingency contracts in which written agreements are used to state consequences that will occur given a student's performance of specified appropriate behaviors and/or the completion of academic tasks. Contingency contracts need to be renegotiated frequently to respond to the student's changing behavior.

Punishment tells a student what is not acceptable, but it does not tell the student what is acceptable. Punishment can be an effective means of reducing or eliminating unwanted behaviors, although a punishment technique used in isolation will not encourage growth of positive and acceptable behaviors unless it is paired with positive alternative reinforcement contingencies.

References: P. Al Berto and A.C. Troutman, *Applied Behavior Analysis for Teachers*, (Columbus, OH: Charles E. Merril, 1986): 171-174, R. Sprick, *The Solution Book: A Guide to Classroom Discipline* (Chicago, IL: Science Research Associates, Inc., 1981): D1 - D5 L.P. Homme, "Human Motivation and the Environment," in *The Learning Environment: Relationship to Behavior Modification and Implications for Special Education*, ed. N. Haring and R. Whelan (Lawrence: University of Kansas Press, 1966), H.F. Clarizio, *Toward Positive Classroom Discipline*, 3d ed. (New York: Macmillan Co., 1986), Kentucky Department of Social Services, 19 IDELR 32 (OCR 1992), S. Braaten, et al. "Using Punishment With Exceptional Children: A Dilemma for Educators," *Teaching Exceptional Children* (Winter 1988): 79-81, Council for Children with Behavioral Disorders, "Position Paper on Use of Behavior Reduction Strategies with Children with Behavioral Disorders," *Behavioral Disorders, 15* (Aug. 1990): 243-60.

Corporal Punishment

Corporal punishment is limited by most states and forbidden in others. When it is allowed, it is normally confined to paddling. If school officials utilize corporal punishment, it should be applied only in strict conformity with state law and school district policies, and with a second school official present to witness its application. This official should be informed beforehand, in the student's presence, of the reason for the punishment. Corporal punishment should be administered only after school officials have considered the following factors:

1) The extent of the injury which could be inflicted as the result of the punishment.
2) Whether or not the punishment will be administered as part of a good faith disciplinary program.
3) The relationship between the need for punishment and the amount of punishment to be administered.
4) The overall need for the application of corporal punishment.

Furthermore, IEPs or accommodation plans should be reviewed to ensure that the administration of corporal punishment is consistent with the educational needs of the student.

References: *Fee v. Herndon*, 900 F.2d 804, 16 *EHLR* 1178 (5th Cir.), cert. denied, 111 S. Ct. 279 (1990), *Cole v. Greenfield-Central Community Schools*, 657 F. Supp. 56, 1986-87 *EHLR* 558:467 (S.D. Ind. 1986), *Monel v. Department of Social Services*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978); *Rascon v. Hardiman*, 803 F.2d 269, 273 (7th Cir 1986), *Waechter v. School District No. 14-030*, 773 F. Supp. 1005, 18 *IDELR* 134 (W.D. Mich. 1990).

Programmatic Alternatives

There are many productive and useful substitutes for suspension and expulsion. The following programmatic alternatives are not all inclusive, and must be based on the student behavior and system resources within the district. It is important that school officials recognize that a continuum of available alternatives or choices enhances and reinforces the confidence of the staff in maintaining and delivering services and programs to students with disabilities. Improving the organizational structure by offering a variety of program delivery models and successful methodology, encourages and adds another level of support. These programmatic alternatives should be, as part of best practices, incorporated and written into the IEP or accommodation plan.

Time-out

Time-out has proven to be both a popular and effective method for suppressing inappropriate behavior. It can be defined as the contingent removal of a student from an activity through isolation from the group or environmental stimulus which has promoted the misbehavior. Removal should result in reduced anxiety and improved attention and concentration. The application of the time-out procedure does allow for immediate follow-through since the student remains in the school settings. Time-out also allows for the reinforcement of more positive and appropriate behaviors following the reduction of problem behaviors by emphasizing the importance of time-in activities. Time-out is not a suspension from services; rather it is isolation for a limited period of time during the school day with minimal impact on the educational process. Time-out that is an extension of the IEP or accommodation plan is intended to eventually increase the student's opportunity for learning.

References: *Honig v. Doe*, 484 U.S. 305, 1987 *EHLR* 559:231 (1988), aff'g as modified, *Doe v. Maher*, 793 F.2d 1470, 1985-86 *EHLR* 557:353 (9th Cir. 1990), D.E. Smith, "Is Isolation Room Time-Out a Punisher?" *Journal of Behavioral Disorders* 6 (Aug. 1981): 247-56.

In-School Suspension

The overriding goal of in-school suspension programs is to exclude the problem student from the general education classroom while continuing to provide some type of educational service. An in-school suspension program is not to be a reinforcing or unnecessarily punitive environment, but rather one that has the intent of deterring students away from future violations of the disciplinary policy. It should offer an instructional program that is, at a minimum, as demanding, challenging, and informative, as the student's routine program. Outlining the terms of in-school suspension in the IEP or accommodation plan facilitates a communication link between the home, the student, and the administration to ensure that specific activities are completed.

References: M.H. Mizell, "Designing and Implementing In-School Alternatives to Suspension," *The Urban Review 10* no. 3 (1978): 213-26, Chester County (TN) School District, 17 EHLR 301 (OCR 1990), J.K. Crawford, "In-School Suspension: A Positive Alternative to Disciplinary Exclusion," in *Positive Alternatives to the Disciplinary Exclusion of Behaviorally Disordered Students*, ed. J.K. Grosenick and S.L. Huntze (Columbia: Department of Special Education, University of Missouri, 1984).

Systematic Exclusion

Systematic exclusion involves sending misbehaving students home or to an acceptable and supervised alternative site for a limited time period rather than isolating them within the school. The actual duration and location of the exclusion is determined by the nature of the misbehavior. The effectiveness of systematic exclusion is enhanced by an additional contingency: time lost is time that must be made up to assure that a student understands the notion that avoidance of responsibilities is not an option. Systematic exclusion entails the use of a behavior contract, and the IEP or accommodation plan process provides an excellent vehicle to review the implications of such an approach. This technique appears to work well with students who display acting out, impulsive behavior and who do not have a clear recognition of the consequences of their own behavior.

References: D.W. Keirsey, "Systematic Exclusion: Eliminating Chronic Classroom Disruptions" in *Behavioral Counseling*, ed J.D. Krumboltz and C.E. Thoresen (New York: Holt, Rinehardt and Winston, 1969): 89-114.

Level Systems

The development of a level system focuses on a description of four to six levels of behavioral, academic, and social expectations, and the criteria for movement from one level to another. As the student progresses through these levels, expectations and privileges are increased. In a level system the student recognizes that by changing

behavior, attitude, and performance, there is an opportunity to experience success in school. Important to the level system is the determination of entry-level, intermediary, and terminal-level behaviors, the appropriate privileges, and the establishment of communication, monitoring, and support systems that will be necessary. The continuum of levels can be readily incorporated into a student's IEP or accommodation plan, with parental support to help avoid misunderstandings about integration levels. Change from one level to another is defined by performance and is predetermined by the written plan for each individual student.

References: A.M. Bauer and T.M. Shea, "Structuring Classrooms Through Level Systems," *Focus on Exceptional Children 21* (Nov. 1988): 1-10, A.M. Bauer, T.M. Shea, and R. Keppler, "Level Systems, A Framework for the Individualization of Behavior Management," *Journal of Behavioral Disorders 11* (1986): 28-35, S.W. Smith and D.T. Farrel, "Level System Use in Special Education: Classroom Intervention with Prima facie Appeal," *Journal of Behavioral Disorders 8*, no. 4 (Aug. 1993): 254-64.

Modified School Day/Modified School Week

A modified school day or shorter week allows the IEP or accommodation plan committee to plan more specifically and organize a student's schedule so that time is used more wisely. The ultimate schedule is determined by the needs of the student and is a management of time. The technique of a modified school day may be especially effective with secondary level students who are involved in transition programming into the community and the world of work. A modified school week offers flexibility for instructional programming and is based on the model that the schedule is developed from a student's needs rather than out of convenience of the system. The student is exposed to the same number of hours annually, but the plan includes a reinforcement contingency that allows the student to attend school during a specified period of time while earning reinforcement for a period of time off for good behavior. The modified school week is self-reinforcing and encourages the student to work harder to maintain the level of the shorter week program.

References: *School District of the City of Saginaw*, 16 *EHLR* 1801 (OCR 1990), *Christopher M v. Corpus Christi Independent School District*, 17 *IDELR* 990, 992 (5th Cir. 1991)

Alternative School Placement

Alternative schools are an option for students who are not motivated to participate in the general education curriculum. They may also be utilized for control of disruptive behavior and for teaching new and socially appropriate behavior, although alternative school placements must be considered in light of the district's responsibility to provide FAPE in the least restrictive environment. Various considerations must be addressed when developing such a program, including simple, direct program rules, established

measures for noncompliance with school rules, a plan for parental involvement at all stages, the qualifications of individuals to be employed and facilities to be used, and specific evaluation and performance measures.

References: *Letter to Uhler*, 18 *IDELR* 1238 (OSEP 1992).

Involvement of Families

Schools need to involve families and the community at every level of policy development concerned with discipline so that these groups are familiar with and supportive of the school's goals and objectives. The development of a working policy that encourages parental involvement in the school experience is essential in reducing discipline problems.

References: S.M. Elam, L.C. Rose, and A.M. Gallup, *The 23rd Annual Gallup Phi Delta Kappa Poll of the Public's Attitudes Toward the Public Schools* (Phi Delta Kappa Educational Foundation, 1992).

CONCLUSION

The relentless search for alternative disciplinary procedures persists. Appropriate intervention for students with disabilities who exhibit behavioral difficulties and challenging behaviors can take many forms. A prescriptive approach matching intervention plans with analysis of the student's needs is an important educational process. There is no absolute universal approach or package program that works in remediating all problem behaviors. What is clearly necessary is a united approach from administrators, teachers, families, university trainers and legal professionals in attempting to deal with the major concern of discipline in the schools.

There is a critical need for wider dissemination of information about newer, more successful approaches to keeping students in school through coordinated, "wraparound" programs involving cooperation among all those concerned with this problem: schools, families, mental health agencies and other community groups. While the more traditional strategies can work in some cases, an expanded repertoire is needed to address the more complicated and acute situation that now persists in the maintenance of discipline in schools.

A clear understanding of legal requirements coupled with a combination of well planned services firmly supported by families and the staff contribute to a positive and total educational environment. Creating a good and positive discipline atmosphere is not achieved by adopting specific or isolated practices, but results from creating a total school

and community environment. Intervention techniques and the overall instructional climate need to compliment one another in order to effectively and efficiently change the school environment. Practicing communication and encouraging active participation from all staff members and focusing on the needs of the students with special emphasis on reinforcement of positive behaviors and preventive measures sets the stage for a well coordinated, most productive school environment.

There is no quick fix for the discipline issues that we face now or that other professionals faced before us. Continuing to focus only on punitive actions sets the stage for repetitive disciplinary failure. We need to create an environment that not only conforms to legal and regulatory requirements, but also balances the safety and wellbeing of all students, provides the basis for accountability and consequences for inappropriate and unacceptable behavior and equally provide opportunities for new learning and competency development.

Schools need to create and nurture strong relationships between and among school personnel, and with families and community agencies by frequent and meaningful participation. For example, a cooperative working relationship between schools and juvenile justice authorities could facilitate and support school strategies for handling matters that involve some discipline cases. Informed families and community involvement are essential. Teaching staff and administration need to recognize the importance that the day-to-day operations for discipline rest with the classroom teacher, but teachers cannot be effective unless administration plays an important and supporting role.

School officials must attempt to redirect students who manifest challenging behaviors at an early age into more productive and socially responsible behavior. Too often, discipline problems rise to crisis levels because school districts fail to create or implement an array of alternatives capable of addressing students' needs. Failure to address the trajectory toward future, and possibly more difficult discipline problems, is then ultimately of our own making; a challenge we may find even harder to accept.

Finally, Congress must address the legal and procedural quagmire which has resulted from its silence in the IDEA as to the discipline of students with disabilities. The impact of due process proceedings and the stay-put provision on a schools ability to effectively and efficiently respond to discipline issues and school violence must be tempered. Additionally, the requirement that schools provide alternate services to properly expelled students with disabilities must be clarified. Absent such changes, the IDEA and Section 504 will unduly stifle the ability of school officials to maintain a safe and orderly school environment.

References: W.W. Wayson, pg. 26, *Handbook for Developing Schools with Discipline Problems*, 34 CFR Section 300.14(a)(1), 300.551(a), 300.551(b)(1).